



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2022-0782; FRL-10215-02-R4]

Air Plan Approval; NC; Miscellaneous NSR Revisions and Updates; Updates to References to Appendix W Modeling Guideline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing the approval of a State Implementation Plan (SIP) revision, submitted by North Carolina on April 13, 2021.

Specifically, EPA is approving updates to the incorporation by reference of Federal new source review (NSR) regulations and federal guidelines on air quality modeling in the North Carolina SIP. EPA is also converting a previous conditional approval regarding the infrastructure SIP prevention of significant deterioration (PSD) elements, for the 2015 ozone national ambient air quality standards (NAAQS) for North Carolina to a full approval. EPA is also approving updates to North Carolina's NSR regulations to better align them with the federal rules. EPA is approving these changes pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R04-OAR-2022-0782. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management

Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Josue Ortiz Borrero, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number for Mr. Ortiz Borrero is (404) 562-8085. Mr. Ortiz Borrero can also be reached via electronic mail at ortizborrero.josue@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2015, EPA promulgated a revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe.¹ For the 2015 8-hour ozone NAAQS, states were required to submit such SIP revisions (also known as iSIPs) no later than October 1, 2018.

On September 27, 2018, North Carolina met the requirement to submit an iSIP for the 2015 8-hour ozone NAAQS by the October 1, 2018, deadline. Through previous rulemakings, EPA approved most of the infrastructure SIP elements for the 2015 ozone NAAQS for North

¹ Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an "infrastructure SIP" or "iSIP."

Carolina.² However, regarding the PSD elements of section 110(a)(2)(C), (D)(i)(II) (prong 3), and (J) (herein referred to as element C, Prong 3, and element J, respectively), EPA conditionally approved³ these portions of North Carolina’s iSIP submission because of outdated references to the federal guideline on air quality modeling found in Appendix W of 40 CFR part 51.⁴

As discussed in the conditional approval for the 2015 ozone iSIP PSD elements, North Carolina’s SIP contained outdated references to Appendix W, and the State committed to update the outdated references and submit a SIP revision within one year of EPA’s final rule conditionally approving these PSD elements. Accordingly, North Carolina was required to make its submission by April 15, 2021. North Carolina met its commitment by submitting a SIP revision to correct the deficiencies on April 13, 2021.

Through a Notice of Proposed Rulemaking (NPRM), EPA proposed to approve the changes to the North Carolina SIP and to also convert the April 15, 2020, conditional approval to a full approval regarding element C, Prong 3, and element J for the 2015 8-hour ozone NAAQS infrastructure SIP. *See* 87 FR 61548 (October 12, 2022). Comments on the October 12, 2022, NPRM were due on or before November 14, 2022. No comments were received on the October 12, 2022, NPRM, and EPA is now finalizing the changes.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of North Carolina regulations 15A NCAC 02D .0530, “Prevention of Significant Deterioration,” state effective on October 1, 2020, and .0544, “Prevention of Significant Deterioration Requirements for Greenhouse Gases,” state effective on November 1,

² EPA approved most elements for North Carolina, except for the Interstate Transport provisions (Prongs 1 & 2) and the PSD provisions (elements C, Prong 3, and J), on March 11, 2020. *See* 85 FR 14147. EPA approved the interstate transport provisions (Prongs 1 & 2) for North Carolina on December 2, 2021. *See* 86 FR 68413.

³ Under CAA section 110(k)(4), EPA may conditionally approve a SIP revision based on a commitment from a state to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If the state fails to meet the commitment within one year of the final conditional approval, the conditional approval will be treated as a disapproval and EPA will issue a finding of disapproval.

⁴ *See* 85 FR 20836 (April 15, 2020).

2020, making several updates to North Carolina’s emission control permitting rules consistent with federal requirements.⁵ EPA has made, and will continue to make, the SIP generally available at the EPA Region 4 Office (please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble for more information).

Therefore, the revised materials as stated above, have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.⁶

III. Final Action

EPA is approving changes to the North Carolina SIP and converting the conditional approval for element C, Prong 3, and element J for the 2015 8-hour ozone Infrastructure SIP to a full approval. Specifically, EPA is approving changes to North Carolina Rule 15A NCAC 02D .0530, “Prevention of Significant Deterioration,” and .0544, “Prevention of Significant Deterioration Requirements for Greenhouse Gases.”

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices,

⁵ EPA is not approving the October 1, 2020, state-effective version of Rule 02D .0530 to the extent that the rule incorporates by reference certain provisions of 40 CFR 51.166, as specified in this footnote. NCDAQ provided a letter to EPA dated September 6, 2022, clarifying that it is not requesting approval of these provisions into the North Carolina SIP.

EPA is not approving the October 1, 2020, state-effective version of Rule 02D .0530 to the extent that the rule incorporates by reference 51.166(b)(2)(iii)(a) as of July 1, 2019. Instead, the version of 40 CFR 51.166(b)(2)(iii)(a) in the SIP remains the version that existed in the CFR on March 15, 1996, as approved by EPA into the SIP on October 15, 1999 (64 FR 55831).

EPA is also not approving the October 1, 2020, state-effective version of Rule 02D .0530 to the extent the rule incorporates by reference 40 CFR 51.166(i)(2). Instead, the version of 40 CFR 51.166(i)(2) in the SIP remains the version that existed in the CFR on July 1, 2014, as approved by EPA into the SIP on September 11, 2018 (83 FR 45827).

Finally, EPA is not approving the October 1, 2020, state-effective version of Rule 02D .0530 to the extent the rule incorporates by reference the following federal provisions: 40 CFR 51.166(b)(2)(v), 51.166(b)(3)(iii)(d), 51.166(b)(53) – (56), 51.166(i)(11) [note that the NPRM included a typographical error and cited instead to 40 CFR 51.166(i)(11)(ii)], and 51.166(y).

⁶ *See* 62 FR 27968 (May 22, 1997).

provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 20, 2022

Daniel Blackman,
Regional Administrator,
Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II – North Carolina

§ 52.1769 [Reserved].

2. Remove and reserve § 52.1769

3. Amend § 52.1770 by:

a. In paragraph (c), in table (1) under “Subchapter 2D Air Pollution Control Requirements”, revising the entries for “Section .0530” and “Section .0544”; and

b. In paragraph (e), in the table by adding at the end an entry for “110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS”

The additions read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(1) EPA Approved North Carolina Regulations

| State citation | Title/subject | State effective date | EPA approval date | Explanation |
|-----------------------|----------------------|-----------------------------|--------------------------|--------------------|
| ** | ** | * | * | * |

| | | | | |
|------------|---|-----------|---|---|
| Rule .0530 | Prevention of Significant Deterioration | 10/1/2020 | [Insert date of publication in Federal Register], [Insert citation of publication] | <p>Except for the incorporation by reference of 40 CFR 51.166(b)(2)(iii)(a), which is instead the incorporation of the March 15, 1996, version of that section as approved into the SIP on October 15, 1999.</p> <p>Except for the incorporation by reference of 40 CFR 51.166(i)(2), which is instead the incorporation of the July 1, 2014, version of that section as approved into the SIP on September 11, 2018.</p> <p>Except for the incorporation by reference of 40 CFR 51.166(b)(2)(v), 51.166(b)(3)(iii)(d), 51.166(b)(53)-(56), 51.166(i)(11), and 51.166(y).</p> |
| ** | ** | * | * | * |

| | | | | |
|------------|---|-----------|---|---|
| Rule .0544 | Prevention of Significant Deterioration Requirements for Greenhouse Gases | 11/1/2020 | [Insert date of publication in Federal Register], [Insert citation of publication] | Except for the Biomass Deferral Rule language contained in the second sentence of 40 CFR 51.166(b)(48)(ii) (a). |
| ** | ** | * | * | * |

* * * * *

(e) * * *

EPA-Approved North Carolina Non-Regulatory Provisions

| Provision | State effective date | EPA approval date | Federal Register citation | Explanation |
|---|-----------------------------|--|----------------------------------|---|
| ** | ** | * | * | * |
| 110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS | 4/13/2021 | [Insert date of publication in Federal Register] | [Insert citation of publication] | Addressing the PSD provisions of sections 110(a)(2)(C), (D)(i)(II) (Prong 3), and (J) only. |

[FR Doc. 2022-28150 Filed: 1/4/2023 8:45 am; Publication Date: 1/5/2023]